



Sen. William R. Haine

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09800HB5523sam001

LRB098 17373 RLC 59092 a

1 AMENDMENT TO HOUSE BILL 5523

2 AMENDMENT NO. _____. Amend House Bill 5523 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by
5 changing Sections 36-1, 36-1.5, 36-2, and 36-5 as follows:

6 (720 ILCS 5/36-1) (from Ch. 38, par. 36-1)

7 Sec. 36-1. Seizure.

8 (a) Any vessel, vehicle, or aircraft may be seized and
9 impounded by the law enforcement agency if the vessel, vehicle,
10 or aircraft is used with the knowledge and consent of the owner
11 in the commission of, or in the attempt to commit as defined in
12 Section 8-4 of this Code, an offense prohibited by:

13 (1) ~~(a)~~ Section 9-1 (first degree murder), 9-3
14 (involuntary manslaughter and reckless homicide), 10-2
15 (aggravated kidnaping), 11-1.20 (criminal sexual assault),
16 11-1.30 (aggravated criminal sexual assault), 11-1.40

1 (predatory criminal sexual assault of a child), subsection
2 (a) of Section 11-1.50 (criminal sexual abuse), subsection
3 (a), (c), or (d) of Section 11-1.60 (aggravated criminal
4 sexual abuse), Section 11-6 (indecent solicitation of a
5 child), 11-14.4 (promoting juvenile prostitution except
6 for keeping a place of juvenile prostitution), ~~11-15.1,~~
7 ~~11-19.1, 11-19.2,~~ 11-20.1 (child pornography), paragraph
8 (a) (1), (a) (2), (a) (4), (b) (1), (b) (2), (e) (1), (e) (2),
9 (e) (3), (e) (4), (e) (5), (e) (6), or (e) (7) of Section
10 12-3.05 (aggravated battery), ~~11-20.1B, 11-20.3, 12-4.1,~~
11 ~~12-4.2, 12-4.2-5, 12-4.3, 12-4.6,~~ 12-7.3 (stalking),
12 12-7.4 (aggravated stalking), ~~12-13, 12-14,~~ 16-1 (theft if
13 the theft is of precious metal or of scrap metal),
14 subdivision (f) (2) or (f) (3) of Section 16-25 (retail
15 theft), Section 18-2 (armed robbery), 19-1 (burglary),
16 19-2 (possession of burglary tools), 19-3 (residential
17 burglary), 20-1 (arson; residential arson; place of
18 worship arson), 20-2 (possession of explosives or
19 explosive or incendiary devices), subdivision (a) (6) or
20 (a) (7) of Section 24-1 (unlawful use of weapons), Section,
21 24-1.2 (aggravated discharge of a firearm), 24-1.2-5
22 (aggravated discharge of a machine gun or a firearm
23 equipped with a device designed or used for silencing the
24 report of a firearm), 24-1.5 (reckless discharge of a
25 firearm), 28-1 (gambling), or 29D-15.2 (possession of a
26 deadly substance) of this Code; ~~subdivision (a) (1),~~

1 ~~(a) (2), (a) (4), (b) (1), (c) (1), (c) (2), (c) (3), (c) (4),~~
2 ~~(c) (5), (c) (6), or (c) (7) of Section 12-3.05, paragraph (a)~~
3 ~~of Section 12-4 of this Code, paragraph (a) of Section~~
4 ~~11-1.50, paragraph (a) of Section 12-15, paragraph (a),~~
5 ~~(c), or (d) of Section 11-1.60, or paragraphs (a), (c) or~~
6 ~~(d) of Section 12-16 of this Code, or paragraph (a) (6) or~~
7 ~~(a) (7) of Section 24-1 of this Code;~~

8 (2) ~~(b)~~ Section 21, 22, 23, 24 or 26 of the Cigarette
9 Tax Act if the vessel, vehicle, or aircraft contains more
10 than 10 cartons of such cigarettes;

11 (3) ~~(e)~~ Section 28, 29, or 30 of the Cigarette Use Tax
12 Act if the vessel, vehicle, or aircraft contains more than
13 10 cartons of such cigarettes;

14 (4) ~~(d)~~ Section 44 of the Environmental Protection Act;

15 (5) ~~(e)~~ Section 11-204.1 of the Illinois Vehicle Code
16 (aggravated fleeing or attempting to elude a peace
17 officer);

18 (6) Section 11-501 of the Illinois Vehicle Code
19 (driving while under the influence of alcohol or other drug
20 or drugs, intoxicating compound or compounds or any
21 combination thereof) or a similar provision of a local
22 ordinance, and:

23 ~~(f) (1) driving under the influence of alcohol or other drug or~~
24 ~~drugs, intoxicating compound or compounds or any~~
25 ~~combination thereof under Section 11-501 of the~~
26 ~~Illinois Vehicle Code during a period in which~~

1 (A) during a period in which his or her driving
2 privileges are revoked or suspended if ~~where~~ the
3 revocation or suspension was for:

4 (i) Section 11-501 (driving under the
5 influence of alcohol or other drug or drugs,
6 intoxicating compound or compounds or any
7 combination thereof),

8 (ii) Section 11-501.1 (statutory summary
9 suspension or revocation),

10 (iii) paragraph (b) of Section 11-401 (motor
11 vehicle accidents involving death or personal
12 injuries), or for

13 (iv) reckless homicide as defined in Section
14 9-3 of this ~~the Criminal Code of 1961 or the~~
15 ~~Criminal Code of 2012;~~

16 (B) (2) ~~driving while under the influence of~~
17 ~~alcohol, other drug or drugs, intoxicating compound or~~
18 ~~compounds or any combination thereof and has been~~
19 previously convicted of reckless homicide or a similar
20 provision of a law of another state relating to
21 reckless homicide in which the person was determined to
22 have been under the influence of alcohol, other drug or
23 drugs, or intoxicating compound or compounds as an
24 element of the offense or the person has previously
25 been convicted of committing a violation of driving
26 under the influence of alcohol or other drug or drugs,

1 intoxicating compound or compounds or any combination
2 thereof and was involved in a motor vehicle accident
3 that resulted in death, great bodily harm, or permanent
4 disability or disfigurement to another, when the
5 violation was a proximate cause of the death or
6 injuries;

7 (C) ~~(3)~~ the person committed a violation of driving
8 under the influence of alcohol or other drug or drugs,
9 intoxicating compound or compounds or any combination
10 thereof under Section 11-501 of the Illinois Vehicle
11 Code or a similar provision for the third or subsequent
12 time;

13 (D) ~~(4)~~ ~~the person committed the violation while~~ he
14 or she did not possess a valid driver's license or
15 permit or a valid restricted driving permit or a valid
16 judicial driving permit or a valid monitoring device
17 driving permit; or

18 (E) ~~(5)~~ ~~the person committed the violation while~~ he
19 or she knew or should have known that the vehicle he or
20 she was driving was not covered by a liability
21 insurance policy;

22 (7) ~~(g)~~ an offense described in subsection (g) of
23 Section 6-303 of the Illinois Vehicle Code; or

24 (8) ~~(h)~~ an offense described in subsection (e) of
25 Section 6-101 of the Illinois Vehicle Code; ~~may be seized~~
26 ~~and delivered forthwith to the sheriff of the county of~~

1 ~~seizure.~~

2 ~~Within 15 days after such delivery the sheriff shall give~~
3 ~~notice of seizure to each person according to the following~~
4 ~~method: Upon each such person whose right, title or interest is~~
5 ~~of record in the office of the Secretary of State, the~~
6 ~~Secretary of Transportation, the Administrator of the Federal~~
7 ~~Aviation Agency, or any other Department of this State, or any~~
8 ~~other state of the United States if such vessel, vehicle or~~
9 ~~aircraft is required to be so registered, as the case may be,~~
10 ~~by mailing a copy of the notice by certified mail to the~~
11 ~~address as given upon the records of the Secretary of State,~~
12 ~~the Department of Aeronautics, Department of Public Works and~~
13 ~~Buildings or any other Department of this State or the United~~
14 ~~States if such vessel, vehicle or aircraft is required to be so~~
15 ~~registered. Within that 15 day period the sheriff shall also~~
16 ~~notify the State's Attorney of the county of seizure about the~~
17 ~~seizure.~~

18 (b) In addition, any mobile or portable equipment used in
19 the commission of an act which is in violation of Section 7g of
20 the Metropolitan Water Reclamation District Act shall be
21 subject to seizure and forfeiture under the same procedures
22 provided in this Article for the seizure and forfeiture of
23 vessels, vehicles, and aircraft, and any such equipment shall
24 be deemed a vessel, vehicle, or aircraft for purposes of this
25 Article.

26 (c) In addition, ~~when~~ When a person discharges a firearm at

1 another individual from a vehicle with the knowledge and
2 consent of the owner of the vehicle and with the intent to
3 cause death or great bodily harm to that individual and as a
4 result causes death or great bodily harm to that individual,
5 the vehicle shall be subject to seizure and forfeiture under
6 the same procedures provided in this Article for the seizure
7 and forfeiture of vehicles used in violations of clauses (1),
8 (2), (3), or (4) of subsection (a) ~~(a), (b), (c), or (d)~~ of
9 this Section.

10 (d) If the spouse of the owner of a vehicle seized for an
11 offense described in subsection (g) of Section 6-303 of the
12 Illinois Vehicle Code, a violation of subdivision (d)(1)(A),
13 (d)(1)(D), (d)(1)(G), (d)(1)(H), or (d)(1)(I) of Section
14 11-501 of the Illinois Vehicle Code, or Section 9-3 of this
15 Code makes a showing that the seized vehicle is the only source
16 of transportation and it is determined that the financial
17 hardship to the family as a result of the seizure outweighs the
18 benefit to the State from the seizure, the vehicle may be
19 forfeited to the spouse or family member and the title to the
20 vehicle shall be transferred to the spouse or family member who
21 is properly licensed and who requires the use of the vehicle
22 for employment or family transportation purposes. A written
23 declaration of forfeiture of a vehicle under this Section shall
24 be sufficient cause for the title to be transferred to the
25 spouse or family member. The provisions of this paragraph shall
26 apply only to one forfeiture per vehicle. If the vehicle is the

1 subject of a subsequent forfeiture proceeding by virtue of a
2 subsequent conviction of either spouse or the family member,
3 the spouse or family member to whom the vehicle was forfeited
4 under the first forfeiture proceeding may not utilize the
5 provisions of this paragraph in another forfeiture proceeding.
6 If the owner of the vehicle seized owns more than one vehicle,
7 the procedure set out in this paragraph may be used for only
8 one vehicle.

9 (e) In addition, property ~~Property~~ declared contraband
10 under Section 40 of the Illinois Streetgang Terrorism Omnibus
11 Prevention Act may be seized and forfeited under this Article.

12 (Source: P.A. 96-313, eff. 1-1-10; 96-710, eff. 1-1-10;
13 96-1000, eff. 7-2-10; 96-1267, eff. 7-26-10; 96-1289, eff.
14 1-1-11; 96-1551, Article 1, Section 960, eff. 7-1-11; 96-1551,
15 Article 2, Section 1035, eff. 7-1-11; 97-333, eff. 8-12-11;
16 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

17 (720 ILCS 5/36-1.5)

18 Sec. 36-1.5. Preliminary Review.

19 (a) Within 14 days of the seizure, the State's Attorney in
20 the county in which the seizure occurred ~~State~~ shall seek a
21 preliminary determination from the circuit court as to whether
22 there is probable cause that the property may be subject to
23 forfeiture.

24 (b) The rules of evidence shall not apply to any proceeding
25 conducted under this Section.

1 (c) The court may conduct the review under subsection (a)
2 simultaneously with a proceeding pursuant to Section 109-1 of
3 the Code of Criminal Procedure of 1963 for a related criminal
4 offense if a prosecution is commenced by information or
5 complaint.

6 (d) The court may accept a finding of probable cause at a
7 preliminary hearing following the filing of an information or
8 complaint charging a related criminal offense or following the
9 return of indictment by a grand jury charging the related
10 offense as sufficient evidence of probable cause as required
11 under subsection (a).

12 (e) Upon making a finding of probable cause as required
13 under this Section, the circuit court shall order the property
14 subject to the provisions of the applicable forfeiture Act held
15 until the conclusion of any forfeiture proceeding.

16 For seizures of conveyances, within 7 days of a finding of
17 probable cause under subsection (a), the registered owner or
18 other claimant may file a motion in writing supported by sworn
19 affidavits claiming that denial of the use of the conveyance
20 during the pendency of the forfeiture proceedings creates a
21 substantial hardship. The court shall consider the following
22 factors in determining whether a substantial hardship has been
23 proven:

24 (1) the nature of the claimed hardship;

25 (2) the availability of public transportation or other
26 available means of transportation; and

1 (3) any available alternatives to alleviate the
2 hardship other than the return of the seized conveyance.

3 If the court determines that a substantial hardship has
4 been proven, the court shall then balance the nature of the
5 hardship against the State's interest in safeguarding the
6 conveyance. If the court determines that the hardship outweighs
7 the State's interest in safeguarding the conveyance, the court
8 may temporarily release the conveyance to the registered owner
9 or the registered owner's authorized designee, or both, until
10 the conclusion of the forfeiture proceedings or for such
11 shorter period as ordered by the court provided that the person
12 to whom the conveyance is released provides proof of insurance
13 and a valid driver's license and all State and local
14 registrations for operation of the conveyance are current. The
15 court shall place conditions on the conveyance limiting its use
16 to the stated hardship and restricting the conveyance's use to
17 only those individuals authorized to use the conveyance by the
18 registered owner. The court shall revoke the order releasing
19 the conveyance and order that the conveyance be reseized by law
20 enforcement if the conditions of release are violated or if the
21 conveyance is used in the commission of any offense identified
22 in subsection (a) of Section 6-205 of the Illinois Vehicle
23 Code.

24 If the court orders the release of the conveyance during
25 the pendency of the forfeiture proceedings, the registered
26 owner or his or her authorized designee shall post a cash

1 security with the Clerk of the Court as ordered by the court.
2 The court shall consider the following factors in determining
3 the amount of the cash security:

4 (A) the full market value of the conveyance;

5 (B) the nature of the hardship;

6 (C) the extent and length of the usage of the
7 conveyance; and

8 (D) such other conditions as the court deems necessary
9 to safeguard the conveyance.

10 If the conveyance is released, the court shall order that
11 the registered owner or his or her designee safeguard the
12 conveyance, not remove the conveyance from the jurisdiction,
13 not conceal, destroy, or otherwise dispose of the conveyance,
14 not encumber the conveyance, and not diminish the value of the
15 conveyance in any way. The court shall also make a
16 determination of the full market value of the conveyance prior
17 to it being released based on a source or sources defined in 50
18 Ill. Adm. Code 919.80(c)(2)(A) or 919.80(c)(2)(B).

19 If the conveyance subject to forfeiture is released under
20 this Section and is subsequently forfeited, the person to whom
21 the conveyance was released shall return the conveyance to the
22 law enforcement agency that seized the conveyance within 7 days
23 from the date of the declaration of forfeiture or order of
24 forfeiture. If the conveyance is not returned within 7 days,
25 the cash security shall be forfeited in the same manner as the
26 conveyance subject to forfeiture. If the cash security was less

1 than the full market value, a judgment shall be entered against
2 the parties to whom the conveyance was released and the
3 registered owner, jointly and severally, for the difference
4 between the full market value and the amount of the cash
5 security. If the conveyance is returned in a condition other
6 than the condition in which it was released, the cash security
7 shall be returned to the surety who posted the security minus
8 the amount of the diminished value, and that amount shall be
9 forfeited in the same manner as the conveyance subject to
10 forfeiture. Additionally, the court may enter an order allowing
11 any law enforcement agency in the State of Illinois to seize
12 the conveyance wherever it may be found in the State to satisfy
13 the judgment if the cash security was less than the full market
14 value of the conveyance.

15 (Source: P.A. 97-544, eff. 1-1-12; 97-680, eff. 3-16-12.)

16 (720 ILCS 5/36-2) (from Ch. 38, par. 36-2)

17 Sec. 36-2. Action for forfeiture.

18 (a) The State's Attorney in the county in which such
19 seizure occurs if he or she finds that the ~~such~~ forfeiture was
20 incurred without willful negligence or without any intention on
21 the part of the owner of the vessel, vehicle or aircraft or any
22 person whose right, title or interest is of record as described
23 in Section 36-1, to violate the law, or finds the existence of
24 such mitigating circumstances as to justify remission of the
25 forfeiture, may cause the law enforcement agency ~~sheriff~~ to

1 remit the same upon such terms and conditions as the State's
2 Attorney deems reasonable and just. The State's Attorney shall
3 exercise his or her discretion under the foregoing provision of
4 this Section 36-2(a) prior to or promptly after the preliminary
5 review under Section 36-1.5 ~~notice is given in accordance with~~
6 ~~Section 36-1.~~

7 (b) If the State's Attorney does not cause the forfeiture
8 to be remitted he or she shall forthwith bring an action for
9 forfeiture in the Circuit Court within whose jurisdiction the
10 seizure and confiscation has taken place. The State's Attorney
11 shall give notice of seizure and the forfeiture proceeding to
12 each person according to the following method: Upon each person
13 whose right, title, or interest is of record in the office of
14 the Secretary of State, the Secretary of Transportation, the
15 Administrator of the Federal Aviation Agency, or any other
16 Department of this State, or any other state of the United
17 States if the vessel, vehicle, or aircraft is required to be so
18 registered, as the case may be, by delivering the notice and
19 complaint in open court or by certified mail to the address as
20 given upon the records of the Secretary of State, the Division
21 of Aeronautics of the Department of Transportation, the Capital
22 Development Board, or any other Department of this State or the
23 United States if the vessel, vehicle, or aircraft is required
24 to be so registered ~~the forfeiture proceeding by mailing a copy~~
25 ~~of the Complaint in the forfeiture proceeding to the persons,~~
26 ~~and upon the manner, set forth in Section 36-1.~~

1 (c) The owner of the seized vessel, vehicle, or aircraft or
2 any person whose right, title, or interest is of record as
3 described in Section 36-1, may within 20 days after delivery in
4 open court or the mailing of such notice file a verified answer
5 to the Complaint and may appear at the hearing on the action
6 for forfeiture.

7 (d) The State shall show at such hearing by a preponderance
8 of the evidence, that such vessel, vehicle, or aircraft was
9 used in the commission of an offense described in Section 36-1.

10 (e) The owner of such vessel, vehicle, or aircraft or any
11 person whose right, title, or interest is of record as
12 described in Section 36-1, may show by a preponderance of the
13 evidence that he did not know, and did not have reason to know,
14 that the vessel, vehicle, or aircraft was to be used in the
15 commission of such an offense or that any of the exceptions set
16 forth in Section 36-3 are applicable.

17 (f) Unless the State shall make such showing, the Court
18 shall order such vessel, vehicle, or aircraft released to the
19 owner. Where the State has made such showing, the Court may
20 order the vessel, vehicle, or aircraft destroyed ~~or~~ may order
21 it forfeited ~~delivered~~ to any local, municipal or county law
22 enforcement agency, or the Department of State Police or the
23 Department of Revenue of the State of Illinois; ~~or may order it~~
24 ~~sold at public auction.~~

25 (g) ~~(b)~~ A copy of the order shall be filed with the law
26 enforcement agency, ~~sheriff of the county in which the seizure~~

1 ~~occurs~~ and with each Federal or State office or agency with
2 which such vessel, vehicle, or aircraft is required to be
3 registered. Such order, when filed, constitutes authority for
4 the issuance of clear title to such vessel, vehicle, or
5 aircraft, ~~or boat~~ to the department or agency to whom it is
6 delivered or any purchaser thereof. The law enforcement agency
7 ~~sheriff~~ shall comply promptly with instructions to remit
8 received from the State's Attorney or Attorney General in
9 accordance with Sections 36-2(a) or 36-3.

10 (h) (e) The proceeds of any sale at public auction pursuant
11 to Section 36-2 of this Act, after payment of all liens and
12 deduction of the reasonable charges and expenses incurred by
13 the State's Attorney's Office ~~sheriff in storing and selling~~
14 ~~such vehicle,~~ shall be paid to ~~into~~ the law enforcement agency
15 having seized the vehicle for forfeiture ~~general fund of the~~
16 ~~county of seizure.~~

17 (Source: P.A. 84-25.)

18 (720 ILCS 5/36-5)

19 Sec. 36-5. The law enforcement agency, County or sheriff
20 not liable for stored forfeited vehicle. A law enforcement
21 agency, county, sheriff, law enforcement officer or employee of
22 the law enforcement agency or ~~deputy sheriff, or employee of~~
23 ~~the~~ county sheriff shall not be civilly or criminally liable
24 for any damage to a forfeited vehicle stored with a commercial
25 vehicle safety relocater.

1 (Source: P.A. 96-1274, eff. 7-26-10.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.".